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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-218

Filed: 15 August 2017

Buncombe County, Nos. 15 CRS 93851-52

STATE OF NORTH CAROLINA

v.

SHAUN ANTONIO LINDSEY

Appeal by defendant from judgment entered 8 September 2016 by Judge Marvin P. Pope Jr. in Buncombe County Superior Court. Heard in the Court of Appeals 31 July 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Wes Saunders, for the State.

Mary McCullers Reece, for defendant-appellant.

CALABRIA, Judge.

Shaun Antonio Lindsey (“defendant”) appeals from a judgment entered upon his plea of guilty to the charges of possession of cocaine with intent to sell or deliver and possession of not more than one-half ounce of marijuana. After careful review, we affirm.

I. Factual and Procedural Background

At 1:00 p.m. on 31 December 2015, Asheville Police Officer Mike Lamb (“Lieutenant Lamb”) positioned himself on top of a berm overlooking the parking lot to an apartment complex located on Livingston Street, and commenced surveillance with a pair of 10x50 binoculars. Lieutenant Lamb, who had several years’ experience and extensive training in street-level drug interdiction, testified at the suppression hearing that he led “a street-level drug operation to address complaints of open air drug activity in the area of the 292, 284, [and] 288 Buildings of Livingston Street Apartments” on 31 December 2015. The operation followed a series of “undercover buys or camera buys” which identified the location as “significantly more active” in drug activity than other public housing developments in Asheville. Lieutenant Lamb had also “made numerous . . . street-level drug arrests . . . at that exact location” during his eighteen and one-half years with the department.

At approximately 3:45 p.m., he observed a black pickup truck enter the parking lot and pull into a parking space, facing him. Although he was approximately 70 yards away from the truck, Lieutenant Lamb’s elevated position allowed him to “look directly at the pickup truck and in through the windshield.” With the aid of his binoculars, Lieutenant Lamb could see that a male driver was alone inside the vehicle and “was looking around in the parking lot.” The driver also left the truck’s engine running.

Lieutenant Lamb observed a small group of people standing in the parking lot in front of the 288 Building. A female member of the group began to walk toward the pickup truck but stopped, looked back toward the group, and said, “Nah, that’s the police.” After the female discontinued her approach, Lieutenant Lamb saw defendant walk toward the truck from the left side of the lot. Defendant “scanned the parking lot kind of nervously” while proceeding “directly to the passenger side of the pickup truck.” He then opened the door and sat down in the passenger seat.

Lieutenant Lamb gave the following account of his observations after defendant entered the pickup truck:

I saw [defendant] hand something small, I couldn’t tell exactly what it was just from the distance, but saw him hand something small to the driver and the driver hand something paperlike -- from where I was looking I couldn’t tell specifically what it was -- paperlike to [defendant].

After approximately five seconds in the passenger’s seat, defendant “exited the truck and then walked directly towards the 288 Building which was directly ahead of the pickup truck[.]” The driver of the pickup truck immediately backed out of the parking space and left the parking lot.

Based on his training and experience, Lieutenant Lamb believed he had witnessed a hand-to-hand drug transaction between defendant and the driver. He radioed two members of his Housing Team, Sergeant Noland Brown and Officer

Justin Wilson, who detained defendant without incident. Lieutenant Lamb proceeded to their location on foot.

As he came near to defendant, Lieutenant Lamb detected the odor of unburned or “fresh” marijuana coming from his person.¹ Lieutenant Lamb told defendant that he had observed his hand-to-hand exchange with the driver of the pickup truck and smelled marijuana on him and, therefore, “had probable cause to search him[.]” When asked “if he had any marijuana on him[.]” defendant confirmed that he had “a blunt.” Lieutenant Lamb obtained the blunt and two additional “dime bags of marijuana” from defendant’s pocket. After finding the marijuana, Lieutenant Lamb patted down defendant’s groin area for drugs or weapons and felt a bag tucked inside defendant’s pants. The bag was tied to defendant’s belt by a string and held a smaller bag containing seventeen “individual tenth of a gram rocks of crack cocaine and . . . seven hundred-dollar one-gram rocks of crack cocaine.” Lieutenant Lamb also found three \$20 bills on defendant.

Defendant moved to suppress the drugs found by Lieutenant Lamb. In denying defendant’s motion to suppress the drugs, the trial court announced oral findings of fact consistent with his testimony. The court then summarized its findings and conclusions as follows:

Based on the totality of the circumstances
Lieutenant Michael Lamb observed the conduct of the

¹ Sergeant Brown also testified that he “noticed the odor of marijuana . . . coming from [defendant’s] person.”

driver of the black Dodge pickup truck, observed the conduct of a female person in not approaching the truck and actually refraining from approaching the truck due to her belief that it was a police officer, observed the defendant approach the truck directly, observed the truck remain operational by the motor running, and further observed the exchange of some object and some paperlike material between the driver and the defendant, which exchange from the time the defendant entered the truck until his exit from the truck consisted of five seconds.

. . . Lieutenant Lamb had reasonable suspicion based on these articulable facts that to an officer of his experience and training would lead him to believe that the defendant was involved in a drug transaction and was therefore justified in the stopping and detaining of the defendant and conducting a search of his person.

The court noted that “defendant advised Lieutenant Lamb that he had a marijuana blunt on his person when questioned by the officer, which was confirmed by the officer’s search.”

While reserving the right to appeal the denial of his motion to suppress, *see* N.C. Gen. Stat. § 15A-979(b) (2015), defendant pled guilty on 8 September 2016 to possession of cocaine with intent to sell or deliver and possession of not more than one-half ounce of marijuana. The trial court consolidated defendant’s offenses for judgment, and sentenced defendant to a term of 6 months to 17 months’ imprisonment in the custody of the North Carolina Department of Adult Correction. The trial court then suspended defendant’s sentence, and placed him on supervised probation for 18 months. Defendant gave notice of appeal in open court.

II. Motion to Suppress

In his sole argument on appeal, defendant challenges the trial court's denial of his motion to suppress the cocaine and marijuana found on his person by Lieutenant Lamb. Defendant argues that "Lieutenant Lamb lacked the reasonable, articulable suspicion necessary" to conduct an investigatory stop. Absent reasonable cause to believe he was engaged in criminal activity, defendant contends he was subjected to an unreasonable seizure in violation of his rights under the Fourth and Fourteenth Amendments to the United States Constitution and Article I of the North Carolina Constitution. *See generally State v. Garner*, 331 N.C. 491, 506-07, 417 S.E.2d 502, 510 (1992) (holding that the protections afforded by N.C. Const. art. 1, § 20 do not exceed those of the Fourth Amendment). We disagree.

In reviewing the denial of a motion to suppress, our task is to determine "whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law." *State v. Biber*, 365 N.C. 162, 167-68, 712 S.E.2d 874, 878 (2011). Because defendant has not challenged any of the trial court's findings of fact, they "are deemed to be supported by competent evidence and are binding on appeal." *Id.* at 168, 712 S.E.2d at 878. We review *de novo* the trial court's conclusion of law that an "officer had reasonable suspicion to detain a defendant[.]" *State v. Kincaid*, 147 N.C. App. 94, 97, 555 S.E.2d 294, 297 (2001).

In *Minnesota v. Dickerson*, 508 U.S. 366, 124 L. Ed. 2d 334 (1993), the United States Supreme Court articulated the constitutional standard for a warrantless investigatory stop as follows:

[S]earches and seizures conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well delineated exceptions. One such exception was recognized in *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889 (1968), which held that “where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot . . .” the officer may briefly stop the suspicious person and make “reasonable inquiries” aimed at confirming or dispelling his suspicions. *Id.* at 30[, 20 L. Ed. 2d at 911].

Id. at 372-73, 124 L. Ed. 2d at 343-44 (additional citations and quotation marks omitted). Our own Supreme Court has held that “[a]n investigatory stop must be justified by ‘a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity.’ ” *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994) (quoting *Brown v. Texas*, 443 U.S. 47, 51, 61 L. Ed. 2d 357, 362 (1979)).

Reasonable suspicion is a less exacting standard than the probable cause needed for an arrest, requiring only a “minimal level of objective justification, something more than an ‘unparticularized suspicion or hunch.’ ” *Watkins*, 337 N.C. at 442, 446 S.E.2d at 70 (quoting *United States v. Sokolow*, 490 U.S. 1, 7, 104 L. Ed. 2d 1, 10 (1989)). “A court must consider ‘the totality of the circumstances – the whole picture’ in determining whether a reasonable suspicion to make an investigatory stop

exists.” *Id.* at 441, 446 S.E.2d at 70 (quoting *United States v. Cortez*, 449 U.S. 411, 417, 66 L. Ed. 2d 621, 629 (1981)). “This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person.” *State v. Williams*, 366 N.C. 110, 116, 726 S.E.2d 161, 167 (2012) (quoting *United States v. Arvizu*, 534 U.S. 266, 273, 151 L. Ed. 2d 740, 749-50 (2002)) (additional citations and quotations omitted).

We agree with the trial court that Lieutenant Lamb’s observations, as informed by his experience and training, gave rise to a reasonable suspicion that defendant was engaged in criminal activity. Defendant’s participation in what appeared to be a hand-to-hand drug transaction with the driver of the pickup truck, in a location well known for open air drug sales, was sufficient to justify the investigatory stop executed by Lieutenant Lamb and Sergeant Brown. *See State v. Summey*, 150 N.C. App. 662, 667-68, 564 S.E.2d 624, 628 (2002) (holding that an officer’s belief that he had observed the occupants of a truck participate in a drug transaction supported a valid investigatory detention of the truck and its occupants); *see also State v. Travis*, __ N.C. App. __, __, 781 S.E.2d 674, 676-79 (2016). As defendant does not separately contest the officers’ conduct following the initial stop, we affirm the trial court’s ruling and the resulting judgment entered upon defendant’s guilty plea.

STATE V. LINDSEY

Opinion of the Court

AFFIRMED.

Judges TYSON and MURPHY concur.

Report per Rule 30(e).